



February 20, 2009

SENATE BILL No. 460

DIGEST OF SB 460 (Updated February 18, 2009 10:41 am - DI 58)

Citations Affected: IC 13-11; IC 13-12; IC 13-14; IC 13-19; IC 13-23; IC 13-25; IC 34-30; IC 36-1; IC 36-2; IC 36-3; IC 36-4; IC 36-5; noncode.

Synopsis: Environmental land use restrictions. Establishes the institutional control registry administered by the Indiana finance authority (IFA), and establishes the environmental trust fund to fund the registry and the program. Establishes in the registry an inventory and computerized registry of restrictive covenants in Indiana and a computerized registry of environmental restrictive ordinances adopted by Indiana municipal corporations. Requires the IFA to monitor compliance with the covenants, report noncompliance to the department of environmental management (IDEM) and the attorney general, collect fees applied to owners of tracts subject to restrictive covenants, and deposit fee revenue in the environmental trust fund. Establishes consequences for failure to pay the fee. Provides that the state, the IFA, and their officers, agents, and employees are immune from liability for acts or omissions related to maintenance of the inventory and the registries. Provides no person may rely on the accuracy and completeness of information in the inventory and the registries. Requires the IFA to: (1) establish a future sliding fee scale based on the relative costs of monitoring compliance among various tracts of real property subject to restrictive covenants; (2) consider whether a tract owner is a governmental entity; (3) consider means of applying institutional control registry activities to privately established

(Continued next page)

Effective: July 1, 2009.

Gard, Bray, Tallian

January 14, 2009, read first time and referred to Committee on Energy and Environmental Affairs.

February 9, 2009, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.

February 19, 2009, amended, reported favorably — Do Pass.

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environmental restrictive covenants and those established before registry activities begin; and (4) consider the feasibility of incorporating notice of environmental restrictive covenants and restrictive ordinances into the "One Call" system. Amends the definitions of "owner" and "operator" for purposes of exceptions to liability for releases from underground storage tanks (UST) and of "owner or operator" for purposes of exceptions to liability for releases of petroleum. Expands the application of remediation and closure goals, objectives, and standards. Eliminates the authority of IDEM to approve environmental restrictive covenants, delineates the authority of IDEM to enforce covenants, and eliminates IDEM authority to require compliance reports from property owners. Requires IDEM to review and act on activities and land use restrictions proposed as part of certain actions to be included in a restrictive covenant. Permits reimbursement from the underground petroleum storage tank excess liability trust fund of fees paid by the owner of a tract because the tract is subject to a restrictive covenant established to address issues related to a UST located on the tract. Provides that a covenant not to sue does not apply to future liability for a condition on property involved in a voluntary remediation work plan only if the condition was present on the property at the time IDEM issued the certificate of completion. Allows IDEM to include in a certificate of completion or a covenant not to sue conditions that must be performed or maintained after issuance of the certificate or covenant. With respect to local ordinances that establish certain land use restrictions requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to the IFA and IDEM not later than 30 days after passage, amendment, or repeal. Allows IDEM to waive the 60 days notice requirement. Requires IDEM to consider and give effect to environmental restrictive ordinances in evaluating risk based remediation proposals.

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February 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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SENATE BILL No. 460

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-11-2-16, AS AMENDED BY P.L.235-2005,
2 SECTION 126, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) "Authority", for purposes of
4 IC 13-22-10, refers to the Indiana hazardous waste facility site approval
5 authority.
6 (b) "Authority", for purposes of IC 13-18-13, IC 13-18-21, ~~and~~
7 IC 13-19-5, **and IC 13-19-6**, refers to the Indiana finance authority
8 created under IC 4-4-11.
9 SECTION 2. IC 13-11-2-71.2 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2009]: **Sec. 71.2. "Environmental restrictive**
12 **ordinance"** means, with respect to land, any ordinance that:
13 (1) is adopted by a municipal corporation (as defined in
14 IC 36-1-2-10); and
15 (2) limits, regulates, or prohibits any of the following with

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respect to groundwater:

(A) Withdrawal.

(B) Human consumption.

(C) Any other use.

SECTION 3. IC 13-11-2-71.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 71.4. "Environmental trust fund", for purposes of IC 13-19-6, refers to the environmental trust fund established by IC 13-19-6-1.**

SECTION 4. IC 13-11-2-110.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 110.2. "Institutional control registry", for purposes of IC 13-19-6, refers to the institutional control registry established by IC 13-19-6-1.**

SECTION 5. IC 13-11-2-148, AS AMENDED BY P.L.221-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 148. (a) "Operator", for purposes of IC 13-18-10, means the person in direct or responsible charge or control of one (1) or more confined feeding operations.

(b) "Operator", for purposes of IC 13-18-11 and environmental management laws, means the person in direct or responsible charge and supervising the operation of:

- (1) a water treatment plant;
- (2) a wastewater treatment plant; or
- (3) a water distribution system.

(c) "Operator", for purposes of IC 13-20-6, means a corporation, a limited liability company, a partnership, a business association, a unit, or an individual who is a sole proprietor that is one (1) of the following:

- (1) A broker.
- (2) A person who manages the activities of a transfer station that receives municipal waste.
- (3) A transporter.

(d) "Operator", for purposes of IC 13-23, except as provided in **subsection subsections (e), (g), and (h)** means a person:

- (1) in control of; or
 - (2) having responsibility for;
- the daily operation of an underground storage tank.

(e) "Operator", for purposes of IC 13-23-13, does not include the following:

- (1) A person who:
 - (A) does not participate in the management of an underground storage tank;

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- 1 (B) is otherwise not engaged in the:
 2 (i) production;
 3 (ii) refining; and
 4 (iii) marketing;
 5 of regulated substances; and
 6 (C) holds evidence of ownership, primarily to protect the
 7 owner's security interest in the tank.
- 8 (2) A person who:
 9 (A) does not own or lease, directly or indirectly, the facility or
 10 business at which the underground storage tank is located;
 11 (B) does not participate in the management of the facility or
 12 business described in clause (A); and
 13 (C) is engaged only in:
 14 (i) filling;
 15 (ii) gauging; or
 16 (iii) filling and gauging;
 17 the product level in the course of delivering fuel to an
 18 underground storage tank.
- 19 (3) A political subdivision (as defined in IC 36-1-2-13) or unit of
 20 federal or state government that:
 21 (A) acquires ownership or control of an underground storage
 22 tank on a brownfield because of:
 23 (i) bankruptcy;
 24 (ii) foreclosure;
 25 (iii) tax delinquency, including an acquisition under
 26 IC 6-1.1-24 or IC 6-1.1-25;
 27 (iv) abandonment;
 28 (v) the exercise of eminent domain, including any purchase
 29 of property once an offer to purchase has been tendered
 30 under IC 32-24-1-5;
 31 (vi) receivership;
 32 (vii) transfer from another political subdivision or unit of
 33 federal or state government;
 34 (viii) acquiring an area needing redevelopment (as defined
 35 in IC 36-7-1-3) or conducting redevelopment activities,
 36 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
 37 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and
 38 IC 36-7-15.1-15.5;
 39 (ix) other circumstances in which the political subdivision
 40 or unit of federal or state government involuntarily acquired
 41 an interest in the property because of the political
 42 subdivision's or unit's function as sovereign; or

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(x) any other means to conduct remedial actions on a brownfield; and

(B) is engaged only in activities in conjunction with:

(i) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with a brownfield, including complying with land use restrictions and institutional controls; or

(ii) monitoring or closure of an underground storage tank; unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(3)(B), reckless, willful, or wanton misconduct constitutes gross negligence.

(g) "Operator" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(h) "Operator" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 6. IC 13-11-2-150, AS AMENDED BY P.L.221-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 150. (a) "Owner", for purposes of IC 13-23 (except as provided in subsections (b), (c), ~~and (d)~~ (d), (e), and (f)) means:

(1) for an underground storage tank that:

(A) was:

(i) in use on November 8, 1984; or

(ii) brought into use after November 8, 1984;

for the storage, use, or dispensing of regulated substances, a person who owns the underground storage tank; or

(B) is:

(i) in use before November 8, 1984; but

(ii) no longer in use on November 8, 1984;

a person who owned the tank immediately before the discontinuation of the tank's use; or

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(2) a person who conveyed ownership or control of the underground storage tank to a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government because of:

(A) bankruptcy;

(B) foreclosure;

(C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;

(D) abandonment;

(E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(F) receivership;

(G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(H) other circumstances in which a political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(I) any other means to conduct remedial actions on a brownfield;

if the person was a person described in subdivision (1) immediately before the person conveyed ownership or control of the underground storage tank.

(b) "Owner", for purposes of IC 13-23-13, does not include a person who:

(1) does not participate in the management of an underground storage tank;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of regulated substances; and

(3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

(c) "Owner", for purposes of IC 13-23, does not include a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that acquired ownership or control of an underground storage tank because of:

(1) bankruptcy;

(2) foreclosure;

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- (3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
- (4) abandonment;
- (5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (6) receivership;
- (7) transfer from another political subdivision or unit of federal or state government;
- (8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or
- (10) any other means to conduct remedial actions on a brownfield;

unless the political subdivision or unit of federal or state government causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-23 in the same manner and to the same extent as a nongovernmental entity under IC 13-23.

(d) "Owner", for purposes of IC 13-23, does not include a nonprofit corporation that acquired ownership or control of an underground storage tank to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-23 in the same manner and to the same extent as any other nongovernmental entity under IC 13-23.

(e) "Owner" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(f) "Owner" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under

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Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 7. IC 13-11-2-151, AS AMENDED BY P.L.221-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 151. (a) "Owner or operator", for purposes of IC 13-24-1, means the following:

(1) For a petroleum facility, a person who owns or operates the facility.

(2) For a petroleum facility where title or control has been conveyed because of:

(A) bankruptcy;

(B) foreclosure;

(C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;

(D) abandonment;

(E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(F) receivership;

(G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(H) other circumstances in which a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government involuntarily acquired title or control because of the political subdivision's or unit's function as sovereign; or

(I) any other means to conduct remedial actions on a brownfield;

to a political subdivision or unit of federal or state government, a person who owned, operated, or otherwise controlled the petroleum facility immediately before title or control was conveyed.

(b) Subject to subsection (c), the term does not include a political subdivision or unit of federal or state government that acquired ownership or control of the facility through:

(1) bankruptcy;

(2) foreclosure;

(3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

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- (4) abandonment;
- (5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (6) receivership;
- (7) transfer from another political subdivision or unit of federal or state government;
- (8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or
- (10) any other means to conduct remedial actions on a brownfield.
- (c) The term includes a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-24-1:
- (1) in the same manner; and
 - (2) to the same extent;
- as a nongovernmental entity under IC 13-24-1.
- (d) The term does not include a person who:
- (1) does not participate in the management of a petroleum facility;
 - (2) is otherwise not engaged in the:
 - (A) production;
 - (B) refining; and
 - (C) marketing;
- of petroleum; and
- (3) holds evidence of ownership in a petroleum facility, primarily to protect the owner's security interest in the petroleum facility.
- (e) The term does not include a nonprofit corporation that acquired ownership or control of a facility to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-24-1 in the same manner and to the same extent as any other nongovernmental entity under IC 13-24-1.
- (f) The term does not include a person that after June 30, 2009,**

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meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(g) The term does not include a person that meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 8. IC 13-11-2-193.5, AS AMENDED BY P.L.18-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 193.5. "Restrictive covenant" means, with respect to land, any deed restriction, restrictive covenant, environmental covenant, environmental notice, or other restriction or obligation that:

- (1) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment;
- (2) by its terms is intended to run with the land and be binding on successors;
- (3) is recorded with the county recorder's office in the county in which the land is located; ~~and~~
- (4) explains how it can be modified or terminated;
- (5) grants the department access to the land;**
- (6) requires notice to a transferee of:**
 - (A) the land; or**
 - (B) an interest in the land;**
- of the existence of the restrictive covenant; and**
- (7) identifies the environmental files at the department that apply to the land.**

SECTION 9. IC 13-11-2-233.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 233.5. "Tract", for purposes of this chapter **and IC 13-19-6**, means any area of land that is under common ownership and is contained within a continuous border.

SECTION 10. IC 13-12-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The remediation and closure goals, objectives, and standards for ~~activities~~ **all remediation projects** conducted under ~~IC 13-22 and IC 13-23~~ **this**

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title shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

(b) The groundwater quality standards adopted under IC 13-18-17-5 shall allow ~~as appropriate~~, groundwater remediations to be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

SECTION 11. IC 13-14-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Except as provided in IC 13-14-6, the commissioner may proceed in court, by appropriate action, to:

(1) enforce any final order of the commissioner or of one (1) of the boards;

(2) collect any penalties or fees;

(3) procure or secure compliance with this title or any other law that the department has the duty or power to enforce;

(4) procure compliance with any standard or rule of one (1) of the boards; ~~or~~

(5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) **in accordance with the terms of the covenant if the covenant is:**

(A) executed before July 1, 2009;

(B) approved by the commissioner; and

(C) created in connection with any:

(i) remediation;

(ii) closure;

(iii) cleanup; ~~or~~

(iv) corrective action; ~~or~~

(v) **determination exercising enforcement discretion or of no further action being required;**

approved by the department under this title; ~~in accordance with the terms of the covenant; or~~

(6) **enforce a restrictive covenant (as defined in IC 13-11-2-193.5) in accordance with the terms of the covenant if the covenant is:**

(A) executed after June 30, 2009; and

(B) **created in connection with any of the following approved by the department under this title:**

(i) **A remediation.**

(ii) **A closure.**

(iii) **A cleanup.**

(iv) **A corrective action.**

(v) **A determination exercising enforcement discretion or of no further action being required.**

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SECTION 12. IC 13-14-2-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) Subject to subsection (b), a restrictive covenant executed after June 30, 2009, is not subject to approval by the department.**

(b) The department shall:

(1) review; and

(2) approve, disapprove, or partially approve and partially disapprove;

activities and land use restrictions described in IC 13-11-2-193.5(1) that are proposed as part of a remediation, closure, cleanup, corrective action, or determination exercising enforcement discretion or of no further action being required to be included in a restrictive covenant.

(c) After 2009 the department may not require the owner of a tract that has paid a fee under IC 13-19-6-2(b) or IC 13-19-6-2(c) with respect to the tract to report to the department the extent of compliance with a restrictive covenant that:

(1) applies to the tract; and

(2) is the basis of the imposition of the fee.

SECTION 13. IC 13-19-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 19. Institutional Control Registry and Environmental Trust Fund

Sec. 1. The following are established:

(1) The institutional control registry.

(2) The environmental trust fund.

(b) The operations of the institutional control registry are funded solely from the environmental trust fund.

(c) The environmental trust fund:

(1) shall be administered, held, and managed by the authority;

(2) may be used only for the purposes of this chapter; and

(3) consists of:

(A) fees deposited in the environmental trust fund under section 2 of this chapter;

(B) appropriations to the environmental trust fund from the general assembly;

(C) grants, gifts, and donations intended for deposit in the environmental trust fund; and

(D) interest, premiums, gains, or other earnings that accrue from money in the environmental trust fund.

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(d) The expenses of administering the institutional control registry and the environmental trust fund shall be paid from money in the environmental trust fund. Subject to subsection (e), the authority shall invest the money in the environmental trust fund not needed to meet the current obligations related to the management of the institutional control registry in accordance with an investment policy adopted by the authority. Interest, premiums, gains, and other earnings from the investments shall be credited to the environmental trust fund. Money in the environmental trust fund at the end of a state fiscal year does not revert to the state general fund.

(e) As an alternative to subsection (d), the authority may invest or cause to be invested all or a part of the environmental trust fund in a fiduciary account with a trustee that is a financial institution.

Sec. 2. (a) The authority shall administer the institutional control registry by doing the following:

(1) Inventory by tract restrictive covenants throughout Indiana that are:

(A) recorded as described in IC 13-11-2-193.5(3) after 2009; and

(B) established as a part of a plan approved, determination exercising enforcement discretion made, or determination of no further action being required made by either or both of the following:

(i) The department.

(ii) The United States Environmental Protection Agency.

(2) Create a computerized registry by tract of restrictive covenants referred to in subdivision (1) that is accessible to the public.

(3) Create a computerized registry of environmental restrictive ordinances throughout Indiana.

(4) Give notice reasonably calculated to inform the public of the registries referred to in subdivisions (2) and (3).

(5) Develop a program to monitor compliance throughout Indiana with restrictive covenants referred to in subdivision (1).

(6) Report to the department and the attorney general noncompliance with restrictive covenants referred to in subdivision (1).

(7) Collect fees under subsection (d).

(8) Deposit fees collected under subdivision (7) in the environmental trust fund.

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1 (b) Except as provided in subsection (c), the owner of a tract
 2 subject to one (1) or more restrictive covenants referred to in
 3 subsection (a)(1) is liable for a fee in the amount of five thousand
 4 dollars (\$5,000).

5 (c) The authority shall consider the following to establish a
 6 schedule of graduated fees:

7 (1) The relative costs of monitoring compliance under
 8 subsection (a)(5) among various tracts of real property
 9 subject to restrictive covenants.

10 (2) Whether the tract owner is a governmental entity.

11 (3) Any other factor the authority considers relevant in setting
 12 graduated fees.

13 The schedule of graduated fees established under this subsection
 14 applies in lieu of the fee under subsection (b) to owners of real
 15 property subject to restrictive covenants throughout Indiana that
 16 are recorded as described in IC 13-11-2-193.5(3) after the effective
 17 date of the schedule.

18 (d) A fee imposed under subsection (b) or (c) is payable to the
 19 authority for deposit into the environmental trust fund not later
 20 than thirty (30) days after the recording of the restrictive covenant.
 21 If the fee is not paid by that deadline:

22 (1) the authority shall provide to the attorney general the
 23 information necessary for commencement of a collection
 24 action; and

25 (2) the department may withhold, until the fee is paid, the
 26 department's approval of the:

27 (A) remediation;

28 (B) closure;

29 (C) cleanup;

30 (D) corrective action; or

31 (E) determination exercising enforcement discretion or of
 32 no further action being required;

33 under which the restrictive covenant was executed.

34 (e) The following are immune from civil or criminal liability for
 35 any act or omission related to the performance of duties under
 36 subsection (a)(1) through (a)(3):

37 (1) The state and the authority.

38 (2) Officers, agents, and employees of the state and the
 39 authority, either personally or in their official capacities.

40 (f) No person, including the state, the authority, the institutional
 41 control registry, a political subdivision (as defined in IC 36-1-2-13),
 42 or a private person, may rely on the accuracy and completeness of

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information in the following:

- (1) An inventory under subsection (a)(1).
- (2) A registry under subsection (a)(2) or (a)(3).

Sec. 3. (a) The authority may do the following:

(1) Employ:

- (A) fiscal consultants;
- (B) engineers;
- (C) special counsel;
- (D) accountants; and
- (E) any other consultants, employees, and agents;

that the authority considers necessary to carry out the purposes of this chapter.

(2) Fix and pay the compensation of persons employed under subdivision (1) from money available in the environmental trust fund.

(b) Notwithstanding any other law, no direction given by the authority to a political subdivision under this chapter, service provided by the authority to a political subdivision under this chapter, or other action allowed or taken by the authority under this chapter is a defense for or otherwise excuses:

- (1) any act of a political subdivision that violates the law; or
- (2) any failure by a political subdivision to act as required by law.

SECTION 14. IC 13-23-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The department, under rules adopted by the underground storage tank financial assurance board under IC 4-22-2, shall use money in the excess liability trust fund, to the extent that money is available in the excess liability trust fund, to pay claims submitted to the department for the following:

(1) The payment of the costs allowed under IC 13-23-9-2, excluding:

- (A) liabilities to third parties; and
 - (B) the costs of repairing or replacing an underground storage tank;
- arising out of releases of petroleum.

(2) Providing payment of part of the liability of owners and operators of underground petroleum storage tanks:

- (A) to third parties under IC 13-23-9-3; or
- (B) for reasonable attorney's fees incurred in defense of a third party liability claim.

(3) Reimbursement of a fee that is:

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1 (A) paid by the owner of a tract under IC 13-19-6-2(b) or
 2 IC 13-19-6-2(c); and

3 (B) payable because the tract is subject to one (1) or more
 4 restrictive covenants established to address issues related
 5 to an underground storage tank located on the tract.

6 SECTION 15. IC 13-23-9-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The administrator of
 8 the excess liability trust fund shall process, approve, and deny requests
 9 made for payments from the excess liability trust fund under sections
 10 2, and 3, and 3.5 of this chapter.

11 SECTION 16. IC 13-23-9-3.5 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2009]: Sec. 3.5. (a) To receive money from
 14 the excess liability trust fund under IC 13-23-8-1(3), a claimant
 15 must submit to the administrator of the excess liability trust fund
 16 for the administrator's approval a copy of a receipt from the
 17 authority for payment of a fee referred to in IC 13-23-8-1(3).

18 (b) If, after receiving a receipt submitted under subsection (a),
 19 the administrator determines that the receipt is valid, the
 20 administrator shall approve the request for money to be paid from
 21 the excess liability trust fund for reimbursement of the fee.

22 (c) The administrator shall notify the claimant of an approval
 23 or a denial of a claim made under subsection (a) not later than
 24 sixty (60) days after receiving the request. Except as provided in
 25 subsection (f), the administrator shall notify the claimant of all
 26 reasons for a denial or partial denial.

27 (d) Not later than seven (7) days after a request is approved by
 28 the administrator under subsection (b), the administrator shall
 29 forward a copy of a request approved under this section to the
 30 auditor of state.

31 (e) Not later than thirty (30) days after receiving an approved
 32 request under this section, the auditor of state shall pay to the
 33 claimant that submitted the approved receipt the approved amount
 34 from money available in the excess liability trust fund.

35 (f) If the administrator denies a claim made under subsection
 36 (a), the administrator shall notify the claimant in writing not later
 37 than sixty (60) days after receiving the request. The claimant has
 38 thirty (30) days after the receipt of the denial to notify the
 39 administrator of the claimant's intention to appeal the denial. If the
 40 claimant does not notify the administrator of an intention to appeal
 41 in the time provided, further review of the application is not
 42 required. If an intention to appeal is submitted within the time

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provided, the administrator has thirty (30) days after the receipt of the notice of the intention to appeal to provide the claimant with all additional reasons for the denial or partial denial of the request or to specify that all reasons have been provided. The claimant has thirty (30) days after receiving notification from the administrator of all additional reasons for the denial or partial denial or notice specifying that all reasons have been provided to file a petition for review of the denial or partial denial.

SECTION 17. IC 13-23-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. If the administrator denies a request made under section 2, ~~or 3~~, **or 3.5** of this chapter, the owner or operator who made the request may appeal the denial under IC 4-21.5 to the office of environmental adjudication under IC 4-21.5-7.

SECTION 18. IC 13-25-5-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. (a) A voluntary remediation work plan must specify the remediation objectives for the site.

(b) The remediation objectives for each hazardous substance and any petroleum on the site shall be based on:

- (1) background levels of hazardous substances and petroleum that occur naturally on the site; or
- (2) an assessment of the risks pursuant to subsection (d) posed by the hazardous substance or petroleum presently found on the site taking into consideration the following:

- (A) Expected future use of the site.
 - (B) Measurable risks to human health, natural resources, or the environment based on the:
 - (i) activities that take place; and
 - (ii) environmental impact;
- on the site.

(c) If the:

- (1) nature and extent of the hazardous substance or petroleum is adequately characterized under the voluntary remediation work plan; and
- (2) the level of the hazardous substance or petroleum is demonstrated to be below:

- (A) background levels of the hazardous substances and petroleum that occur naturally on the site; or
- (B) the risk based levels developed under subsection (d);

additional action is not necessary to protect human health or the environment.

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(d) Risk based remediation objectives shall be based on one (1) of the following:

(1) Levels of hazardous substances and petroleum calculated by the department using standard equations and default values for particular hazardous substances or petroleum.

(2) Levels of hazardous substances and petroleum calculated using site specific data for the default values in the department's standard equations.

(3) Levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors.

(e) The department shall consider and give effect to environmental restrictive ordinances in evaluating risk based remediation proposals.

SECTION 19. IC 13-25-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) If the commissioner issues a certificate to a person under section 16 of this chapter, the governor shall also provide the person with a covenant not to sue for any liability, including future liability, or a claim resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is addressed by an approved voluntary remediation work plan under this chapter.

(b) A covenant not to sue issued under this section bars suit against:

(1) a person who received the certificate of completion under section 16 of this chapter; or

(2) any other person who receives the certificate of completion:

(A) through a legal transfer of the certificate of completion; or

(B) by acquiring property to which the certificate of completion applies;

from all public or private claims arising under this title or rules adopted under this title in connection with the release or threatened release of a hazardous substance or petroleum that was the subject of the approved voluntary remediation work plan, except as provided in subsection (c).

(c) A covenant not to sue issued under this section may not apply to future liability for a condition or the extent of a condition that:

(1) was present:

(A) on property that was involved in an approved and completed voluntary remediation work plan; and

(B) at the time the commissioner issued the certificate of completion under section 16 of this chapter; and

(2) was not known to the commissioner at the time the

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commissioner issued the certificate of completion under section 16 of this chapter.

(d) A certificate of completion issued under section 16 of this chapter may include conditions that must be performed or maintained after issuance of the certificate.

(e) The commissioner may include in a covenant not to sue issued under this section conditions that must be performed or maintained after issuance of the covenant.

~~(d)~~ **(f)** Except as:

(1) provided under federal law; or

(2) agreed to by a federal governmental entity;

a covenant not to sue issued under this section may not release a person from liability to the federal government for claims based on federal law.

~~(e)~~ **(g)** After an applicant and the department have signed a voluntary remediation agreement, a person may not bring an action, including an administrative action, against the applicant or any other person proceeding under this chapter on behalf of the applicant for any cause of action arising under this title or rules adopted under this title and relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the agreement. However, this section does not apply if:

(1) the applicant fails to file a proposed voluntary remediation work plan within the time period established in section 8(a)(8) of this chapter;

(2) the commissioner rejects a proposed voluntary remediation work plan submitted in good faith and the rejection is upheld in any appeal brought under section 12 of this chapter;

(3) the applicant or another person proceeding under this chapter on behalf of the applicant fails to complete a voluntary remediation in accordance with an approved voluntary remediation work plan; or

(4) the commissioner withdraws the commissioner's approval of the voluntary remediation work plan and the withdrawal is upheld in any appeal under section 19 of this chapter.

However, if the commissioner withdraws approval of the plan under section 19(a)(2) of this chapter, the commissioner may bring an action, including an administrative action, against the applicant.

~~(f)~~ **(h)** A person who purchases property that is the subject of a voluntary remediation agreement at the time the property is purchased may not be subject to an enforcement action to the same extent as an applicant under subsection ~~(e)~~ **(g)**.

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SECTION 20. IC 34-30-2-51.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 51.5. IC 13-19-6-2(e) (Concerning actions relating to the institutional control registry).**

SECTION 21. IC 36-1-2-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.7. "Environmental restrictive ordinance" means, with respect to land, any ordinance that:**

- (1) is adopted by a municipal corporation; and**
- (2) limits, regulates, or prohibits one (1) or more of the following with respect to groundwater:**
 - (A) Withdrawal.**
 - (B) Human consumption.**
 - (C) Any other use.**

SECTION 22. IC 36-1-6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) The legislative body of a municipal corporation shall:**

- (1) subject to subsection (b), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and**
- (2) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.**

(b) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (a)(1).

(c) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (a).

(d) The failure of an environmental restrictive ordinance to comply with subsection (c) does not void the ordinance.

SECTION 23. IC 36-2-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) An ordinance, order, or resolution is considered adopted when it is signed by the presiding officer. If required, an adopted ordinance, order, or resolution must be promulgated or published according to statute before it takes effect.**

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published once each week for two (2)

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consecutive weeks, according to IC 5-3-1. However, if such an ordinance is adopted by the legislative body of a county subject to IC 36-2-3.5 and there is an urgent necessity requiring its immediate effectiveness, it need not be published if:

- (1) the county executive proclaims the urgent necessity; and
- (2) copies of the ordinance are posted in three (3) public places in each of the districts of the county before it takes effect.

(c) **The following apply** in addition to the other requirements of this section:

(1) An ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 is considered adopted only if it is:

~~(1)~~ (A) approved by signature of a majority of the county executive;

~~(2)~~ (B) neither approved nor vetoed by a majority of the executive, within ten (10) days after passage by the legislative body; or

~~(3)~~ (C) passed over the veto of the executive by a two-thirds (2/3) vote of the legislative body, within sixty (60) days after presentation of the ordinance or resolution to the executive.

(2) **The legislative body of a county shall:**

(A) subject to subdivision (3), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(B) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(3) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subdivision (2)(A).

(4) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subdivision (2).

(5) **The failure of an environmental restrictive ordinance to comply with subdivision (4) does not void the ordinance.**

(d) After an ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 has been signed by the presiding officer, the county auditor shall present it to the county executive, and record the time of the presentation. Within ten (10) days after an ordinance or resolution is presented to it, the executive shall:

- (1) approve the ordinance or resolution, by signature of a majority

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of the executive, and send the legislative body a message announcing its approval; or

(2) veto the ordinance or resolution, by returning it to the legislative body with a message announcing its veto and stating its reasons for the veto.

(e) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(f) An ordinance increasing a building permit fee on new development must:

(1) be published:

(A) one (1) time in accordance with IC 5-3-1; and

(B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and

(2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

SECTION 24. IC 36-3-4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance or resolution passed by a legislative body is considered adopted when it is:

(1) signed by the presiding officer; and

(2) if subject to veto, either approved by the executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

(b) All ordinances and resolutions of a legislative body are subject to veto, except the following:

(1) An ordinance or resolution, or part of either, providing for the budget or appropriating money for an office or officer of the county provided for by the Constitution of Indiana or for a judicial office or officer.

(2) An ordinance or resolution approving or modifying the budget of a political subdivision that the legislative body is permitted by statute to review.

(3) A resolution making an appointment that the legislative body is authorized to make.

(4) A resolution selecting officers or employees of the legislative body.

(5) A resolution prescribing rules for the internal management of the legislative body.

(6) A zoning ordinance or amendment to a zoning ordinance, or

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a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(c) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

(1) it is published under subsection (d); or

(2) there is an urgent necessity requiring its immediate effectiveness, the executive proclaims the urgent necessity, and copies of the ordinance are posted in three (3) public places in the county.

(d) If a legislative body publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

(1) of the ordinances in the book or pamphlet;

(2) of the date of adoption of the ordinances; and

(3) that the ordinances have been properly signed, attested, recorded, and approved.

(e) Unless a legislative body provides in an ordinance or resolution for a later effective date, the ordinance or resolution takes effect when it is adopted, subject to subsections (c) and (d).

(f) Subsections (a), (c), (d), and (e) do not apply to zoning ordinances or amendments to zoning ordinances, or resolutions approving comprehensive plans, that are adopted under IC 36-7.

(g) The legislative body shall:

(1) subject to subsection (h), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(2) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(h) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (g)(1).

(i) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (g).

(j) The failure of an environmental restrictive ordinance to

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1 **comply with subsection (i) does not void the ordinance.**

2 SECTION 25. IC 36-4-6-14 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance,
4 order, or resolution passed by the legislative body is considered
5 adopted when it is:

6 (1) signed by the presiding officer; and

7 (2) either approved by the city executive or passed over ~~his~~ **the**
8 **executive's** veto by the legislative body, under section 16 of this
9 chapter.

10 If required by statute, an adopted ordinance, order, or resolution must
11 be promulgated or published before it takes effect.

12 (b) An ordinance prescribing a penalty or forfeiture for a violation
13 must, before it takes effect, be published in the manner prescribed by
14 IC 5-3-1, unless:

15 (1) it is published under subsection (c); or

16 (2) there is an urgent necessity requiring its immediate
17 effectiveness, the city executive proclaims the urgent necessity,
18 and copies of the ordinance are posted in three (3) public places
19 in each of the districts from which members are elected to the
20 legislative body.

21 (c) Except as provided in subsection (e), if a city publishes any of
22 its ordinances in book or pamphlet form, no other publication is
23 required. If an ordinance prescribing a penalty or forfeiture for a
24 violation is published under this subsection, it takes effect two (2)
25 weeks after the publication of the book or pamphlet. Publication under
26 this subsection, if authorized by the legislative body, constitutes
27 presumptive evidence:

28 (1) of the ordinances in the book or pamphlet;

29 (2) of the date of adoption of the ordinances; and

30 (3) that the ordinances have been properly signed, attested,
31 recorded, and approved.

32 (d) This section does not apply to a zoning ordinance or amendment
33 to a zoning ordinance, or a resolution approving a comprehensive plan,
34 that is adopted under IC 36-7.

35 (e) An ordinance increasing a building permit fee on new
36 development must:

37 (1) be published:

38 (A) one (1) time in accordance with IC 5-3-1; and

39 (B) not later than thirty (30) days after the ordinance is
40 adopted by the legislative body in accordance with IC 5-3-1;

41 and

42 (2) delay the implementation of the fee increase for ninety (90)

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days after the date the ordinance is published under subdivision (1).

(f) The legislative body shall:

(1) subject to subsection (g), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(2) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(g) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (f)(1).

(h) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (f).

(i) The failure of an environmental restrictive ordinance to comply with subsection (h) does not void the ordinance.

SECTION 26. IC 36-5-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is signed by the executive. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

(1) it is published under IC 36-1-5; or

(2) it declares an emergency requiring its immediate effectiveness and is posted in:

(A) one (1) public place in each district in the town; or

(B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts under section 4.1 of this chapter.

(c) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(d) An ordinance increasing a building permit fee on new development must:

(1) be published:

(A) one (1) time in accordance with IC 5-3-1; and

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(B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and

(2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(e) The legislative body shall:

(1) subject to subsection (f), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(2) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(f) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (e)(1).

(g) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (e).

(h) The failure of an environmental restrictive ordinance to comply with subsection (g) does not void the ordinance.

SECTION 27. [EFFECTIVE JULY 1, 2009] (a) The Indiana finance authority shall do the following:

(1) Conduct a study to develop recommendations for policies and legislation necessary to implement the institutional control registry established by IC 13-19-6-1, as added by this act, to inventory, monitor compliance, report noncompliance, and impose fees as described in IC 13-19-6-2, as added by this act, with respect to:

(A) real property covenants that meet the description of a restrictive covenant under IC 13-11-2-193.5, except that they were recorded before 2010; and

(B) real property covenants that meet the description of a restrictive covenant under IC 13-11-2-193.5, except that they are not imposed as a part of a plan, or a determination exercising enforcement discretion or of no further action being required, approved by either or both of the following:

(i) The department of environmental management.

(ii) The United States Environmental Protection Agency.

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1 **(2) Conduct a study and develop recommendations**
 2 **concerning the feasibility of incorporating notice of:**
 3 **(A) restrictive covenants (as defined in IC 13-11-2-193.5);**
 4 **and**
 5 **(B) environmental restrictive ordinances (as defined in**
 6 **IC 36-1-2-4.7, as added by this act);**
 7 **into the "One Call" system managed by the Indiana**
 8 **Underground Plant Protection Service under IC 8-1-26.**
 9 **(3) Before September 1, 2010, report the results of the studies**
 10 **under subdivisions (1) and (2) to the environmental quality**
 11 **service council.**
 12 **(b) This SECTION expires January 1, 2011.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 460, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 15.

Delete pages 2 through 4.

Page 5, delete lines 1 through 31 begin a new paragraph and insert:
"SECTION 1. IC 13-11-2-16, AS AMENDED BY P.L.235-2005, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) "Authority", for purposes of IC 13-22-10, refers to the Indiana hazardous waste facility site approval authority.

(b) "Authority", for purposes of IC 13-18-13, IC 13-18-21, ~~and~~ IC 13-19-5, **and IC 13-19-6**, refers to the Indiana finance authority created under IC 4-4-11.

SECTION 2. IC 13-11-2-71.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 71.2. "Environmental restrictive ordinance" means, with respect to land, any ordinance that:**

- (1) is adopted by a municipal corporation (as defined in IC 36-1-2-10); and**
- (2) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment.**

SECTION 3. IC 13-11-2-71.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 71.4. "Environmental trust fund", for purposes of IC 13-19-6, refers to the environmental trust fund established by IC 13-19-6-1.**

SECTION 4. IC 13-11-2-110.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 110.2. "Institutional control registry", for purposes of IC 13-19-6, refers to the institutional control registry established by IC 13-19-6-1.**

SECTION 5. IC 13-11-2-148, AS AMENDED BY P.L.221-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 148. (a) "Operator", for purposes of IC 13-18-10, means the person in direct or responsible charge or control of one (1) or more confined feeding operations.

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(b) "Operator", for purposes of IC 13-18-11 and environmental management laws, means the person in direct or responsible charge and supervising the operation of:

- (1) a water treatment plant;
- (2) a wastewater treatment plant; or
- (3) a water distribution system.

(c) "Operator", for purposes of IC 13-20-6, means a corporation, a limited liability company, a partnership, a business association, a unit, or an individual who is a sole proprietor that is one (1) of the following:

- (1) A broker.
- (2) A person who manages the activities of a transfer station that receives municipal waste.
- (3) A transporter.

(d) "Operator", for purposes of IC 13-23, except as provided in ~~subsection~~ **subsections (e), (g), and (h)** means a person:

- (1) in control of; or
 - (2) having responsibility for;
- the daily operation of an underground storage tank.

(e) "Operator", for purposes of IC 13-23-13, does not include the following:

- (1) A person who:
 - (A) does not participate in the management of an underground storage tank;
 - (B) is otherwise not engaged in the:
 - (i) production;
 - (ii) refining; and
 - (iii) marketing;
 of regulated substances; and
 - (C) holds evidence of ownership, primarily to protect the owner's security interest in the tank.
- (2) A person who:
 - (A) does not own or lease, directly or indirectly, the facility or business at which the underground storage tank is located;
 - (B) does not participate in the management of the facility or business described in clause (A); and
 - (C) is engaged only in:
 - (i) filling;
 - (ii) gauging; or
 - (iii) filling and gauging;
 the product level in the course of delivering fuel to an underground storage tank.
- (3) A political subdivision (as defined in IC 36-1-2-13) or unit of

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federal or state government that:

(A) acquires ownership or control of an underground storage tank on a brownfield because of:

- (i) bankruptcy;
- (ii) foreclosure;
- (iii) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
- (iv) abandonment;
- (v) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (vi) receivership;
- (vii) transfer from another political subdivision or unit of federal or state government;
- (viii) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (ix) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired an interest in the property because of the political subdivision's or unit's function as sovereign; or
- (x) any other means to conduct remedial actions on a brownfield; and

(B) is engaged only in activities in conjunction with:

- (i) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with a brownfield, including complying with land use restrictions and institutional controls; or
- (ii) monitoring or closure of an underground storage tank; unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(3)(B), reckless, willful, or wanton misconduct constitutes gross negligence.

(g) "Operator" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

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(h) "Operator" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 6. IC 13-11-2-150, AS AMENDED BY P.L.221-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 150. (a) "Owner", for purposes of IC 13-23 (except as provided in subsections (b), (c), ~~and (d)~~ (d), (e), and (f)) means:

- (1) for an underground storage tank that:
 - (A) was:
 - (i) in use on November 8, 1984; or
 - (ii) brought into use after November 8, 1984; for the storage, use, or dispensing of regulated substances, a person who owns the underground storage tank; or
 - (B) is:
 - (i) in use before November 8, 1984; but
 - (ii) no longer in use on November 8, 1984; a person who owned the tank immediately before the discontinuation of the tank's use; or
- (2) a person who conveyed ownership or control of the underground storage tank to a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government because of:
 - (A) bankruptcy;
 - (B) foreclosure;
 - (C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;
 - (D) abandonment;
 - (E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
 - (F) receivership;
 - (G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 - (H) other circumstances in which a political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or

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unit's function as sovereign; or

(I) any other means to conduct remedial actions on a brownfield;

if the person was a person described in subdivision (1) immediately before the person conveyed ownership or control of the underground storage tank.

(b) "Owner", for purposes of IC 13-23-13, does not include a person who:

(1) does not participate in the management of an underground storage tank;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of regulated substances; and

(3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

(c) "Owner", for purposes of IC 13-23, does not include a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that acquired ownership or control of an underground storage tank because of:

(1) bankruptcy;

(2) foreclosure;

(3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

(4) abandonment;

(5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(6) receivership;

(7) transfer from another political subdivision or unit of federal or state government;

(8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(10) any other means to conduct remedial actions on a brownfield;

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unless the political subdivision or unit of federal or state government causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-23 in the same manner and to the same extent as a nongovernmental entity under IC 13-23.

(d) "Owner", for purposes of IC 13-23, does not include a nonprofit corporation that acquired ownership or control of an underground storage tank to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-23 in the same manner and to the same extent as any other nongovernmental entity under IC 13-23.

(e) "Owner" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(f) "Owner" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 7. IC 13-11-2-151, AS AMENDED BY P.L.221-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 151. (a) "Owner or operator", for purposes of IC 13-24-1, means the following:

- (1) For a petroleum facility, a person who owns or operates the facility.
- (2) For a petroleum facility where title or control has been conveyed because of:
 - (A) bankruptcy;
 - (B) foreclosure;
 - (C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;
 - (D) abandonment;
 - (E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under

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IC 32-24-1-5;

(F) receivership;

(G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(H) other circumstances in which a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government involuntarily acquired title or control because of the political subdivision's or unit's function as sovereign; or

(I) any other means to conduct remedial actions on a brownfield;

to a political subdivision or unit of federal or state government, a person who owned, operated, or otherwise controlled the petroleum facility immediately before title or control was conveyed.

(b) Subject to subsection (c), the term does not include a political subdivision or unit of federal or state government that acquired ownership or control of the facility through:

(1) bankruptcy;

(2) foreclosure;

(3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

(4) abandonment;

(5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(6) receivership;

(7) transfer from another political subdivision or unit of federal or state government;

(8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(10) any other means to conduct remedial actions on a brownfield.

(c) The term includes a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision

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or unit of federal or state government is subject to IC 13-24-1:

- (1) in the same manner; and
- (2) to the same extent;

as a nongovernmental entity under IC 13-24-1.

(d) The term does not include a person who:

- (1) does not participate in the management of a petroleum facility;
- (2) is otherwise not engaged in the:
 - (A) production;
 - (B) refining; and
 - (C) marketing;
 of petroleum; and
- (3) holds evidence of ownership in a petroleum facility, primarily to protect the owner's security interest in the petroleum facility.

(e) The term does not include a nonprofit corporation that acquired ownership or control of a facility to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-24-1 in the same manner and to the same extent as any other nongovernmental entity under IC 13-24-1.

(f) The term does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(g) The term does not include a person that meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 8. IC 13-11-2-233.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 233.5. "Tract", for purposes of this chapter **and IC 13-19-6**, means any area of land that is under common ownership and is contained within a continuous border."

Page 5, delete lines 41 through 42, begin a new paragraph and insert:

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"SECTION 10. IC 13-14-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Except as provided in IC 13-14-6, the commissioner may proceed in court, by appropriate action, to:

- (1) enforce any final order of the commissioner or of one (1) of the boards;
- (2) collect any penalties or fees;
- (3) procure or secure compliance with this title or any other law that the department has the duty or power to enforce;
- (4) procure compliance with any standard or rule of one (1) of the boards; or
- (5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) **in accordance with the terms of the covenant if the covenant is:**

- (A) executed before July 1, 2009;

- (B) approved by the commissioner; and

- (C) created in connection with any:

- (i) remediation;

- (ii) closure;

- (iii) cleanup; or

- (iv) corrective action; or

- (v) **determination exercising enforcement discretion or of no further action being required;**

approved by the department under this title; in accordance with the terms of the covenant; or

- (6) **enforce a restrictive covenant (as defined in IC 13-11-2-193.5) in accordance with the terms of the covenant if the covenant is:**

- (A) executed after June 30, 2009; and

- (B) **created in connection with any of the following approved by the department under this title:**

- (i) **A remediation.**

- (ii) **A closure.**

- (iii) **A cleanup.**

- (iv) **A corrective action.**

- (v) **A determination exercising enforcement discretion or of no further action being required."**

Page 6, delete lines 1 through 27.

Page 6, line 33, delete "may:" and insert "**shall:**".

Page 6, line 38, delete "or".

Page 6, line 39, after "action" insert "**, or determination exercising enforcement discretion or of no further action being required".**



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Page 6, line 41, delete "IC 4-4-11-46(d) or IC 4-4-11-46(e)" and insert **"IC 13-19-6-2(b) or IC 13-19-6-2(c)"**.

Page 7, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 12. IC 13-19-6-1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The following are established:

(1) The institutional control registry.

(2) The environmental trust fund.

(b) The operations of the institutional control registry are funded solely from the environmental trust fund.

(c) The environmental trust fund:

(1) shall be administered, held, and managed by the authority;

(2) may not be used for any purpose other than funding the operations of the authority related to the management of the institutional control registry; and

(3) consists of:

(A) fees deposited in the environmental trust fund under section 2 of this chapter;

(B) appropriations to the environmental trust fund from the general assembly;

(C) grants, gifts, and donations intended for deposit in the environmental trust fund; and

(D) interest, premiums, gains, or other earnings that accrue from money in the environmental trust fund.

(d) The expenses of administering the institutional control registry and the environmental trust fund shall be paid from money in the environmental trust fund. Subject to subsection (e), the authority shall invest the money in the environmental trust fund not needed to meet the current obligations related to the management of the institutional control registry in accordance with an investment policy adopted by the authority. Interest, premiums, gains, and other earnings from the investments shall be credited to the environmental trust fund. Money in the environmental trust fund at the end of a state fiscal year does not revert to the state general fund.

(e) As an alternative to subsection (d), the authority may invest or cause to be invested all or a part of the environmental trust fund in a fiduciary account with a trustee that is a financial institution.

SECTION 13. IC 13-19-6-2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The authority shall administer the institutional control registry by doing the following:

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(1) Inventory by tract restrictive covenants throughout Indiana that are:

(A) recorded as described in IC 13-11-2-193.5(3) after 2009; and

(B) established as a part of a plan approved, determination exercising enforcement discretion made, or determination of no further action being required made by either or both of the following:

(i) The department.

(ii) The United States Environmental Protection Agency.

(2) Create a computerized registry by tract of restrictive covenants referred to in subdivision (1) that is accessible to the public.

(3) Create a computerized registry of environmental restrictive ordinances throughout Indiana.

(4) Give notice reasonably calculated to inform the public of the registries referred to in subdivisions (2) and (3).

(5) Monitor compliance throughout Indiana with restrictive covenants referred to in subdivision (1).

(6) Report to the department and the attorney general noncompliance with restrictive covenants referred to in subdivision (1).

(7) Collect fees under subsection (d).

(8) Deposit fees collected under subdivision (7) in the environmental trust fund.

(b) Except as provided in subsection (d), the owner of a tract subject to one (1) or more restrictive covenants referred to in subsection (a)(1) is liable for a fee in the amount of five thousand dollars (\$5,000).

(c) The authority shall establish a schedule of graduated fees based on the relative costs of monitoring compliance under subsection (a)(5) among various tracts of real property subject to restrictive covenants. The schedule of graduated fees under this subsection applies in lieu of the fee under subsection (b) to owners of real property subject to restrictive covenants throughout Indiana that are recorded as described in IC 13-11-2-193.5(3) after the effective date of the schedule of graduated fees established by the authority.

(d) A fee imposed under subsection (b) or (c) is payable to the authority for deposit into the environmental trust fund not later than thirty (30) days after the recording of the restrictive covenant. If the fee is not paid by that deadline:

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(1) the authority shall provide to the attorney general the information necessary for commencement of a collection action; and

(2) the department may void its approval of the:

(A) remediation;

(B) closure;

(C) cleanup;

(D) corrective action; or

(E) determination exercising enforcement discretion or of no further action being required;

under which the restrictive covenant was executed.

(e) The following are immune from civil or criminal liability for any act or omission related to the performance of duties under subsection (a)(1) through (a)(3):

(1) The state and the authority.

(2) Officers, agents, and employees of the state and the authority, either personally or in their official capacities.

(f) No person, including the state, the authority, the institutional control registry, a political subdivision (as defined in IC 36-1-2-13), or a private person, may rely on the accuracy and completeness of information in the following:

(1) An inventory under subsection (a)(1).

(2) A registry under subsection (a)(2) or (a)(3).

SECTION 14. IC 13-19-6-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The authority may do the following:

(1) Employ:

(A) fiscal consultants;

(B) engineers;

(C) special counsel;

(D) accountants; and

(E) any other consultants, employees, and agents;

that the authority considers necessary to carry out the purposes of this chapter.

(2) Fix and pay the compensation of persons employed under subdivision (1) from money available in the environmental trust fund.

(b) Notwithstanding any other law, no direction given by the authority to a political subdivision under this chapter, service provided by the authority to a political subdivision under this chapter, or other action allowed or taken by the authority under this chapter is a defense for or otherwise excuses:

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- (1) any act of a political subdivision that violates the law; or
 (2) any failure by a political subdivision to act as required by law."

Page 7, line 23, delete "IC 4-4-11-46(d) or" and insert "**IC 13-19-6-2(b) or IC 13-19-6-2(c);**".

Page 7, line 24, delete "IC 4-4-11-46(e);".

Page 7, line 39, delete "environmental trust" and insert "**authority**".

Page 8, line 39, delete "[EFFECTIVE UPON PASSAGE]" and insert "[EFFECTIVE JULY 1, 2009]".

Page 10, delete lines 24 through 42 begin a new paragraph and insert:

"SECTION 20. IC 34-30-2-51.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 51.5. IC 13-19-6-2(e) (Concerning actions relating to the institutional control registry).**".

Page 11, delete lines 1 through 6.

Page 11, line 7, delete "IC 36-1-2-15.7" and insert "**IC 36-1-2-4.7**".

Page 11, line 9, delete "Sec. 15.7. "Restrictive" and insert "**Sec. 4.7. "Environmental restrictive**".

Page 11, line 22, delete "a" and insert "**an environmental**".

Page 11, line 23, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 11, line 25, delete "a" and insert "**an environmental**".

Page 11, line 26, delete "A" and insert "**An environmental**".

Page 12, line 19, delete "a" and insert "**an environmental**".

Page 12, line 20, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 12, line 22, delete "a" and insert "**an environmental**".

Page 12, line 23, delete "A" and insert "**An environmental**".

Page 14, line 22, delete "a" and insert "**an environmental**".

Page 14, line 23, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 14, line 25, delete "a" and insert "**an environmental**".

Page 14, line 26, delete "A" and insert "**An environmental**".

Page 15, line 35, delete "a" and insert "**an environmental**".

Page 15, line 36, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 15, line 38, delete "a" and insert "**an environmental**".

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Page 15, line 39, delete "A" and insert "**An environmental**".

Page 16, line 34, delete "a" and insert "**an environmental**".

Page 16, line 35, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 16, line 37, delete "a" and insert "**an environmental**".

Page 16, line 38, delete "A" and insert "**An environmental**".

Delete page 17.

Page 18, delete lines 1 through 38, begin a new paragraph and insert:

"SECTION 27. [EFFECTIVE JULY 1, 2009] (a) **The Indiana finance authority shall do the following:**

(1) **Conduct a study to develop recommendations for policies and legislation necessary to implement the institutional control registry established by IC 13-19-6-1, as added by this act, to inventory, monitor compliance, report noncompliance, and impose fees as described in IC 13-19-6-2, as added by this act, with respect to:**

(A) **real property covenants that meet the description of a restrictive covenant under IC 13-11-2-193.5, except that they were recorded before 2010; and**

(B) **real property covenants that meet the description of a restrictive covenant under IC 13-11-2-193.5, except that they are not imposed as a part of a plan, or a determination exercising enforcement discretion or of no further action being required, approved by either or both of the following:**

(i) **The department of environmental management.**

(ii) **The United States Environmental Protection Agency.**

(2) **Conduct a study and develop recommendations concerning the feasibility of incorporating notice of:**

(A) **restrictive covenants (as defined in IC 13-11-2-193.5); and**

(B) **environmental restrictive ordinances (as defined in IC 36-1-2-4.7, as added by this act);**

into the "One Call" system managed by the Indiana Underground Plant Protection Service under IC 8-1-26.

(3) **Before September 1, 2010, report the results of the studies under subdivisions (1) and (2) to the environmental quality service council.**

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(b) This SECTION expires January 1, 2011."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 460 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 460, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete line 15, begin a new line block indented and insert:

"(2) limits, regulates, or prohibits any of the following with respect to groundwater:

(A) Withdrawal.

(B) Human consumption.

(C) Any other use."

Page 2, delete lines 1 through 3.

Page 9, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 8. IC 13-11-2-193.5, AS AMENDED BY P.L.18-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 193.5. "Restrictive covenant" means, with respect to land, any deed restriction, restrictive covenant, environmental covenant, environmental notice, or other restriction or obligation that:

(1) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment;

(2) by its terms is intended to run with the land and be binding on successors;

(3) is recorded with the county recorder's office in the county in which the land is located; ~~and~~

(4) explains how it can be modified or terminated;

(5) grants the department access to the land;

(6) requires notice to a transferee of:

(A) the land; or

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**(B) an interest in the land;
of the existence of the restrictive covenant; and
(7) identifies the environmental files at the department that
apply to the land."**

Page 10, line 41, delete "IC 13-19-6-1" and insert "IC 13-19-6".

Page 10, line 42, delete "NEW SECTION" and insert "NEW
CHAPTER".

Page 11, line 1, delete "Sec. 1. (a) The following are established:".

Page 11, between lines 1 and 2, begin a new paragraph and insert:

**"Chapter 19. Institutional Control Registry and Environmental
Trust Fund**

Sec. 1. The following are established:".

Page 11, delete lines 8 through 10, begin a new line block indented
and insert:

"(2) may be used only for the purposes of this chapter; and".

Page 11, delete lines 34 through 35.

Page 11, line 36, delete "1, 2009]: Sec. 2." and insert:

"Sec. 2."

Page 12, line 13, delete "Monitor" and insert **"Develop a program
to monitor"**.

Page 12, line 21, delete "(d)," and insert "(c),".

Page 12, delete lines 25 through 33, begin a new paragraph and
insert:

**"(c) The authority shall consider the following to establish a
schedule of graduated fees:**

**(1) The relative costs of monitoring compliance under
subsection (a)(5) among various tracts of real property
subject to restrictive covenants.**

(2) Whether the tract owner is a governmental entity.

**(3) Any other factor the authority considers relevant in setting
graduated fees.**

**The schedule of graduated fees established under this subsection
applies in lieu of the fee under subsection (b) to owners of real
property subject to restrictive covenants throughout Indiana that
are recorded as described in IC 13-11-2-193.5(3) after the effective
date of the schedule."**

Page 12, line 41, delete "void its" and insert **"withhold, until the fee
is paid, the department's"**.

Page 13, delete lines 19 through 20.

Page 13, line 21, delete "1, 2009]: Sec. 3." and insert:

"Sec. 3."

Page 15, between lines 31 and 32, begin a new paragraph and insert:

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"SECTION 20. IC 13-25-5-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. (a) A voluntary remediation work plan must specify the remediation objectives for the site.

(b) The remediation objectives for each hazardous substance and any petroleum on the site shall be based on:

- (1) background levels of hazardous substances and petroleum that occur naturally on the site; or
- (2) an assessment of the risks pursuant to subsection (d) posed by the hazardous substance or petroleum presently found on the site taking into consideration the following:

- (A) Expected future use of the site.
- (B) Measurable risks to human health, natural resources, or the environment based on the:
 - (i) activities that take place; and
 - (ii) environmental impact; on the site.

(c) If the:

- (1) nature and extent of the hazardous substance or petroleum is adequately characterized under the voluntary remediation work plan; and
- (2) the level of the hazardous substance or petroleum is demonstrated to be below:

- (A) background levels of the hazardous substances and petroleum that occur naturally on the site; or
- (B) the risk based levels developed under subsection (d);

additional action is not necessary to protect human health or the environment.

(d) Risk based remediation objectives shall be based on one (1) of the following:

- (1) Levels of hazardous substances and petroleum calculated by the department using standard equations and default values for particular hazardous substances or petroleum.
- (2) Levels of hazardous substances and petroleum calculated using site specific data for the default values in the department's standard equations.
- (3) Levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors.

(e) The department shall consider and give effect to environmental restrictive ordinances in evaluating risk based remediation proposals."

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Page 16, line 20, delete "The commissioner may include in a" and insert "A".

Page 16, line 21, after "chapter" insert "**may include**".

Page 17, delete lines 27 through 42, begin a new line block indented and insert:

"(2) limits, regulates, or prohibits one (1) or more of the following with respect to groundwater:

(A) Withdrawal.

(B) Human consumption.

(C) Any other use.

SECTION 24. IC 36-1-6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) The legislative body of a municipal corporation shall:**

(1) subject to subsection (b), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(2) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(b) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (a)(1).

(c) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (a).

(d) The failure of an environmental restrictive ordinance to comply with subsection (c) does not void the ordinance.

SECTION 25. IC 36-2-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) An ordinance, order, or resolution is considered adopted when it is signed by the presiding officer. If required, an adopted ordinance, order, or resolution must be promulgated or published according to statute before it takes effect.**

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published once each week for two (2) consecutive weeks, according to IC 5-3-1. However, if such an ordinance is adopted by the legislative body of a county subject to IC 36-2-3.5 and there is an urgent necessity requiring its immediate effectiveness, it need not be published if:

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- (1) the county executive proclaims the urgent necessity; and
- (2) copies of the ordinance are posted in three (3) public places in each of the districts of the county before it takes effect.

(c) **The following apply** in addition to the other requirements of this section:

(1) An ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 is considered adopted only if it is:

- ~~(1)~~ (A) approved by signature of a majority of the county executive;
- ~~(2)~~ (B) neither approved nor vetoed by a majority of the executive, within ten (10) days after passage by the legislative body; or
- ~~(3)~~ (C) passed over the veto of the executive by a two-thirds (2/3) vote of the legislative body, within sixty (60) days after presentation of the ordinance or resolution to the executive.

(2) **The legislative body of a county shall:**

(A) **subject to subdivision (3), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and**

(B) **give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.**

(3) **Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subdivision (2)(A).**

(4) **An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subdivision (2).**

(5) **The failure of an environmental restrictive ordinance to comply with subdivision (4) does not void the ordinance.**

(d) After an ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 has been signed by the presiding officer, the county auditor shall present it to the county executive, and record the time of the presentation. Within ten (10) days after an ordinance or resolution is presented to it, the executive shall:

- (1) approve the ordinance or resolution, by signature of a majority of the executive, and send the legislative body a message announcing its approval; or
- (2) veto the ordinance or resolution, by returning it to the legislative body with a message announcing its veto and stating

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its reasons for the veto.

(e) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(f) An ordinance increasing a building permit fee on new development must:

(1) be published:

(A) one (1) time in accordance with IC 5-3-1; and

(B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and

(2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

SECTION 26. IC 36-3-4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance or resolution passed by a legislative body is considered adopted when it is:

(1) signed by the presiding officer; and

(2) if subject to veto, either approved by the executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

(b) All ordinances and resolutions of a legislative body are subject to veto, except the following:

(1) An ordinance or resolution, or part of either, providing for the budget or appropriating money for an office or officer of the county provided for by the Constitution of Indiana or for a judicial office or officer.

(2) An ordinance or resolution approving or modifying the budget of a political subdivision that the legislative body is permitted by statute to review.

(3) A resolution making an appointment that the legislative body is authorized to make.

(4) A resolution selecting officers or employees of the legislative body.

(5) A resolution prescribing rules for the internal management of the legislative body.

(6) A zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(c) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by

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IC 5-3-1, unless:

- (1) it is published under subsection (d); or
- (2) there is an urgent necessity requiring its immediate effectiveness, the executive proclaims the urgent necessity, and copies of the ordinance are posted in three (3) public places in the county.

(d) If a legislative body publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

(e) Unless a legislative body provides in an ordinance or resolution for a later effective date, the ordinance or resolution takes effect when it is adopted, subject to subsections (c) and (d).

(f) Subsections (a), (c), (d), and (e) do not apply to zoning ordinances or amendments to zoning ordinances, or resolutions approving comprehensive plans, that are adopted under IC 36-7.

(g) The legislative body shall:

- (1) subject to subsection (h), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and**
- (2) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.**

(h) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (g)(1).

(i) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (g).

(j) The failure of an environmental restrictive ordinance to comply with subsection (i) does not void the ordinance.

SECTION 27. IC 36-4-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance, order, or resolution passed by the legislative body is considered

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adopted when it is:

- (1) signed by the presiding officer; and
- (2) either approved by the city executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under subsection (c); or
- (2) there is an urgent necessity requiring its immediate effectiveness, the city executive proclaims the urgent necessity, and copies of the ordinance are posted in three (3) public places in each of the districts from which members are elected to the legislative body.

(c) Except as provided in subsection (e), if a city publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

(d) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(e) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(f) The legislative body shall:

- (1) subject to subsection (g), give written notice to the**

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department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(2) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(g) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (f)(1).

(h) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (f).

(i) The failure of an environmental restrictive ordinance to comply with subsection (h) does not void the ordinance.

SECTION 28. IC 36-5-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is signed by the executive. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under IC 36-1-5; or
- (2) it declares an emergency requiring its immediate effectiveness and is posted in:
 - (A) one (1) public place in each district in the town; or
 - (B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts under section 4.1 of this chapter.

(c) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(d) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90)

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days after the date the ordinance is published under subdivision (1).

(e) The legislative body shall:

(1) subject to subsection (f), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(2) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(f) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (e)(1).

(g) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (e).

(h) The failure of an environmental restrictive ordinance to comply with subsection (g) does not void the ordinance."

Delete pages 18 through 22.

Page 23, delete lines 1 through 21.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 460 as printed February 10, 2009.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 1.

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